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Progress report of the Special Rapporteur on the right to education, Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1999/25

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Executive summary

In her progress report, the Special Rapporteur on the right to education notes difficulties in the carrying out of her mandate which originate in inadequate servicing by the Office of the High Commissioner for Human Rights, and also points out an innovative facet she has introduced, follow-up to her country missions, following the Commission's emphasis on promoting the right to education.

The report summarizes recent work by the human rights treaty bodies and her related activities. She briefly describes joint meetings and incipient cooperation, building towards collaborative approaches to the right to education and possibly also joint activities. This is followed by a short summary of ongoing activities within the United Nations, noting the Special Rapporteur's cooperation with UNESCO, UNICEF and ILO. An account of the ongoing Jomtien+10 process will be included in her oral report to the Commission.

With regard to difficulties in the realization of the right to education, the Special Rapporteur repeats her earlier decision not to approach Governments with requests for general information and thanks those which responded to her inquiries about particular difficulties brought to her attention, as well as to her appeals for particularly important domestic jurisprudence on the right to education. She points out that particular incidents or precedent-setting court cases should not shift attention away from the fact that education remains beyond the reach of an unknown - but large - number of children who are not administratively and statistically recorded, illustrating the range of countries in which child registration at birth is not all-encompassing in table 1.

The report focuses on international cooperation from the viewpoint of financial obstacles to the realization of the right to education, especially at the level of primary education. The Special Rapporteur describes and discusses the continuously diminishing aid flows and the relative increase of aid for education, especially by multilateral agencies. Table 2 provides a bird's-eye view of bilateral aid for education and points out differences in the orientation of this aid, which may be slanted towards education of foreign students in the donor country rather than basic education in the recipient's. The lack of coherence in international aid policies is discussed by highlighting the varying status of education, which is defined as a need or a right, subsumed under social development or poverty eradication. The section on international cooperation ends with the Special Rapporteur's critique of the World Bank's recent education sector strategy. She points out discrepancies between the Bank's commitment to promoting basic education and to increasing its education lending and discusses the need to apply pertinent international and domestic law. The Special Rapporteur has planned a meeting with the World Bank and will supplement this part of her report orally.

The Special Rapporteur has continued applying her 4-A scheme (availability, accessibility, acceptability and adaptability) to analyse governmental obligations corresponding to the right to education. Deepening her inquiry into availability of schooling, she looks into State and non-State schools and the human rights jurisprudence relating to State funding for private schools, also discussing school vouchers. In addition, she emphasizes key facets of the persistently inadequate attention to teachers in international and domestic education strategies.

As announced in her preliminary report, the Special Rapporteur focuses in this report on school fees in examining accessibility. She points out that the requirement that only primary education be provided free of charge represents a global minimum, depicting the correspondence and difference between primary and compulsory education in table 3. Illustrations for the pattern of school fees in primary schooling are derived from States' reports under the human rights treaties and their examination by the treaty bodies. Even if not all-encompassing, they point to the States' lack of capacity to finance education as the driving force behind school fees. In the Special Rapporteur's view, this reinforces the need to mainstream the human rights approach in education from the local to the global level so as to simultaneously enhance both the capacity and the willingness of all relevant actors to prioritize education.

Continuing her approach to double mainstreaming (i.e. merging human rights and gender throughout education), the Special Rapporteur discusses acceptability by addressing pregnancy as a disciplinary offence. She highlights recent human rights jurisprudence which reinstated an expelled pregnant girl in school, having defined her expulsion as a human rights violation. Because pregnancy is biologically confined to one sex while caused by interaction between the two, the Special Rapporteur deems that keeping pregnancy out of schooling (by keeping sex education out of the curricula and expelling pregnant girls) withholds from children and young people of both sexes a crucial part of their education.

The final section of the report addresses implications of the human-capital approach and international trade in education services for human rights. The Special Rapporteur reiterates and expands upon her critique of the human-capital approach, pointing out the impoverishment of education that would result from a sole focus on economically relevant skills and knowledge. She then examines the global disparities in the outcomes of public investment in education. Because upper secondary education is deemed necessary for the creation and perpetuation of human capital, table 4 summarizes secondary school enrolments, highlighting the disparity between OECD and non-OECD countries. Against this background, the Special Rapporteur discusses the export of education services from OECD to non-OECD countries, pointing out the need for mainstreaming human rights into the emerging legal regulation of trade in education services.

Concluding remarks summarize the Special Rapporteur's plans for the future.

Introduction

1. The Commission on Human Rights outlined the terms of reference of the Special Rapporteur in two key resolutions on the right to education adopted at its fifty-fifth session. Resolution 1999/25 accentuated the importance of international cooperation in the realization of economic, social and cultural rights, supporting the Special Rapporteur's planned focus on the elimination of financial obstacles for the realization of the right to education, especially at the level of primary education.[1] Resolution 1999/80 on the rights of the child included a special section on the promotion of the right of the child to education.[2] The Special Rapporteur has focused her work and this report on the priorities thus identified by the Commission.

2. The Special Rapporteur wishes to acknowledge with gratitude support for her mandate, especially external funding, which has enabled her to surmount the lacking servicing by the Office of the High Commissioner for Human Rights.[3] The Special Rapporteur has heard various explanations for the inadequate servicing of her mandate and could not discern what the underlying problems are. Rather than lamenting such a state of affairs, she has done the necessary work herself. The Special Rapporteur would like to thank individual Governments, UNICEF, her colleagues in thematic and treaty human rights bodies, academic institutes, non-governmental organizations and individual students, for helping her to carry out her mandate.

3. Because of her late appointment in 1998, the Special Rapporteur was able to carry out two missions in 1999 although the funding for her mandate, regretfully, anticipates no more than one annual five-day mission. She carried out a mission to Uganda from 26 June to 2 July 1999 (see E/CN.4/2000/6/Add.1) and another to the United Kingdom of Great Britain and Northern Ireland from 18 to 22 October 1999 (see E/CN.4/2000/6/Add.2). Guided by the emphasis on promoting the right to education in her mandate, she has initiated follow-up to her country missions, so that the mission reports would constitute the beginning of a process rather than a self-contained activity. She returned to Uganda from 20 to 26 November 1999, upon the invitation of UNICEF, to participate in the planning of the Government of Uganda-UNICEF programme of collaboration for 2001-2005 and has continued to cooperate with UNICEF in the operationalization of rights-based programming. She has also started corresponding with the Government of the United Kingdom with a view to following up her visit as soon as she finalized drafting her mission report.

I. OVERVIEW OF UNFOLDING DEVELOPMENTS AND RELATED ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. A great deal of activity has marked the field of education and many developments are ongoing. In order to keep the Commission informed of the unfolding developments within the reporting cycle and space constraints, the Special Rapporteur has confined this report to brief descriptions of pertinent activities and will update them in her oral report to the Commission.

A. Human rights treaty bodies

5. During the sixth meeting of Special Rapporteurs (31 May-3 June 1999), the first joint meeting with chairpersons of human rights treaty bodies took place and the Special Rapporteur

has followed up the thrust of this meeting by establishing dialogue with individual treaty bodies. The right to education pertains to them all, albeit in its different facets, and the Special Rapporteur therefore felt that she should take the initiative to approach the treaty bodies individually with a view to identifying issues of common concern and possibilities for cooperation and joint activities.

6. The Special Rapporteur has continued collaborating with the Committee on Economic, Social and Cultural Rights in the follow-up to the general discussion on the right to education on 30 November 1998. The Committee adopted a general comment on article 14 (plans of action for primary education) and another on article 13 (the right to education),[4] with the Special Rapporteur contributing to both processes. The Special Rapporteur had an informal meeting with the Committee on the Rights of the Child on 29 September 1999, which revealed a large number of issues for further dialogue as well as opportunities for collaboration. She is planning to have a meeting with the Committee on the Elimination of Racial Discrimination in March 2000 and thereafter also meetings with the Human Rights Committee and the Committee on the Elimination of All Forms of Discrimination against Women.

B. Recent activities within the United Nations

7. The Fourth Global Meeting of the International Consultative Forum on Education for All will take place in Dakar from 26 to 28 April 2000 and is expected to adopt a framework for action entitled "Education for all: meeting our commitments". This meeting is referred to as Jomtien+10 and it is based, as the title of the draft final document indicates, on the acknowledgement that commitments made at Jomtien in 1990 have not been met. Indeed the 1990 commitment had been to achieve universal primary education for all by the year 2000; the target year was postponed to 2015 at the Social Summit in 1995. The Special Rapporteur is providing input into the preparatory process for Jomtien+10 whenever asked to do so, and is closely monitoring the ongoing process of assessing the education performance in the period 1990-1999. Preliminary results were not available at the time of writing and will be included in her oral report to the Commission in April 2000.

8. The Special Rapporteur paid a visit to UNESCO from 4 to 11 June 1999, introduced her mandate through an internal seminar and had a series of meetings with UNESCO and Education for All (EFA) officials. Her collaboration with UNESCO has continued through the Protocol of Cooperation with UNESCO/International Bureau of Education (IBE), concluded on 1 October 1999, as well as through her contribution to the preparation of the World Education Report 2000 devoted to the right to education. She is also a member of the Advisory Panel for the UNDP Human Development Report 2000, which is also devoted to human rights. The coincidence of two major annual reports - those of UNESCO and UNDP - devoted to human rights testifies to the elevated visibility of human rights within the United Nations and specialized agencies. These initiatives may well lead to the mainstreaming of human rights throughout the United Nations and the promoting of rights-based development.

9. The Special Rapporteur has continued her close cooperation with UNICEF on a variety of issues related to the conceptualization and operationalization of the right to education. She would like to acknowledge her gratitude to UNICEF for exchanging experiences and ideas with her and for supporting her work. She has also developed cooperation with the International

Labour Organization, especially relating to the role of education in the elimination of child labour and to trade union freedoms of teachers, and is planning to broaden it in 2000 to indigenous rights.

C. Identification of difficulties in the realization of the right to education

10. The Commission in its resolution 1998/33 prioritized the Special Rapporteur's task of monitoring and reporting on the realization of the right to education, with a particular emphasis on the difficulties that may be encountered in this process. This task is permanent and the Special Rapporteur has endeavoured to replicate the procedure set up for other mandates, while keeping to the minimum requests to Governments to provide her with information. As noted in her preliminary report, she has not sent out any general request for information but has approached specific Governments for clarification when particular difficulties concerning the right to education were brought to her attention, or when she has obtained information about important domestic jurisprudence relating to the right to education. She wants to acknowledge with appreciation the cooperation extended her by all Governments she has approached thus far.

11. Specific instances brought to the Special Rapporteur's attention or court cases concerning the right to education reveal some difficulties but do not reflect the scope of the challenge in securing access to primary school for all children. The Special Rapporteur is particularly concerned about the continuing lack of information relating to the numbers of children who should be in school but are not, as she noted in her preliminary report. The existing estimates of the number of out-of-school children demonstrate the poverty of our knowledge. In 1996, the EFA estimate of out-of-school children in the 6-11 age group was 110 million, the UNICEF estimate was 140 million.[5] The exact numbers cannot be ascertained because the latest population census was held in some countries more than 15 years ago[6] while registration of children at birth, mandated by the Convention on the Rights of the Child as well as the International Covenant on Civil and Political Rights, has not yet been put into practice. Table 1 summarizes the results of the recent UNICEF overview of gaps in registration at birth and thus in the realization of "the first right" of the child, namely the right to be registered at birth.

Table 1. Non-registration of children at birth

No data	Benin, Bhutan, Burkina Faso, Central African Republic, Côte d'Ivoire, Democratic People's Republic of the Congo, Democratic People's Republic of Korea, Ecuador, Georgia, Haiti, Iraq, Laos People's Democratic Republic, Madagascar, Nepal, Nigeria, Saudi Arabia, Republic of the Congo, Senegal, South Africa, Tanzania, Togo, Viet Nam
No birth registration system	Afghanistan, Cambodia, Eritrea, Ethiopia, Namibia, Oman, Somalia
Less than 30% of children registered	Angola, Bangladesh, Guinea-Bissau, Lesotho, Liberia, Malawi, Mozambique, Niger, Papua New Guinea, Rwanda, Sierra Leone, Zambia
Less than 50% of children registered	Botswana, Burma/Myanmar, Cameroon, Chad, Ghana, Guinea, India, Kenya, Mali, Mauritania, Sudan, Uganda, Yemen, Zimbabwe

Source: UNICEF, The Progress of Nations 1998.

12. Education statistics are governed by the rule of inverse proportion: data are the least available for those countries where education is also the least available and thus the need for data is the greatest. The most sophisticated statistics have been generated in the OECD countries and demonstrate the scope of the effort needed to create internationally comparable data.[7] These point to a crucial difference: children aged 5 to 15[8] constitute 13 per cent of the population in OECD countries, but 30 per cent in developing countries. Lifelong learning is being put into practice in OECD countries,[9] while in developing countries meagre funds have to be stretched to school a large proportion of children. As a consequence, virtually all children will complete 11 years of compulsory education in the OECD countries, whereas in developing countries all-encompassing primary education has yet to be attained, while providing 11 years of education to all (as table 3 below shows) remains a distant dream.

II. INTERNATIONAL POLICIES RELATING TO FINANCIAL OBSTACLES IMPEDING ACCESS TO PRIMARY EDUCATION

13. As foretold in her preliminary report, the Special Rapporteur has carried out an analysis of the evolving policy and pattern of aid for education. The emerging picture has proved none too auspicious. The persistent decline of development aid was marked in 1997, the last year for which data is available, by the volume of aid falling below an annual $50 billion and the proportion of aid to donors' gross national product sinking to 0.2 per cent. It is worth recalling that it had been 0.6 per cent in 1961. Aid for education has - relatively speaking - increased within this diminishing volume of aid.

14. Promising avenues for enhancing the political visibility of the right to education, and thus fostering increased aid, have been matched by parallel campaigns for debt relief, education and rights-based education by a variety of actors, which include United Nations agencies, bilateral donors and non-governmental organizations. The widespread public mobilization for debt relief in the creditor countries at the turn of the millennium[10] has demonstrated the increased political appeal of global solidarity. The Special Rapporteur gave the keynote address at the Action Aid/Oxfam Facing Global Education Crisis conference in London on 8 September 1999 and welcomes increasing mobilization around the right to education. A Global Campaign for the Right to Education was launched on 20 November 1999, on the tenth anniversary of the Convention on the Rights of the Child.[11]

A. Aid for education

15. The OECD Development Assistance Committee (DAC) introduced basic education into its reporting requirements in 1993 and included basic education among the targets for development cooperation in 1995. The novelty of distinguishing basic education within education has not yet yielded comprehensive, up-to-date and reliable aid statistics. The rough proportions are becoming known, however. Most aid for education goes to higher rather than primary education, a large (yet unknown) proportion is spent in donor countries and when it leaves them, aid is destined to middle-income rather than the poorest countries. Less than 2 per cent of total DAC aid (an annual $600 million) is devoted to primary and/or basic education, while the major recipients of aid for education include Israel, the Republic of Korea, Thailand and Turkey,[12] rather than the poorest countries.

16. Table 2 summarizes the existing data on bilateral aid for education and singles out the proportion going to basic education for those donors who made such data available. The data for the latest two years for which they are available, 1995 and 1996, show that aid for education constituted somewhat more than one tenth of total aid, while aid for basic education represented somewhat more than one tenth of that. The declared priority for basic education has not been translated into corresponding allocations. As table 2 shows, total aid for education is slightly decreasing, while aid for basic education is slightly increasing, starting from a very small base, however. The United Kingdom has announced that it would increase by half aid to basic education, health and water in Africa in the period 1998-2001,[13] setting in motion a welcome change.

Table 2. Basic education in bilateral aid for education

Country	1995		1996	
	Education as % of total aid	Out of which basic	Education as % of total aid	Out of which basic
Australia	23.5%	2.6%	29.0%	0.4%
Austria	18.1%	-	18.7%	0.2%
Belgium	13.8%	0.3%	8.6%	0.3%
Canada	8.8%	0.1%	7.3%	1.2%
Denmark	5.2%	-	2.8%	-
Finland	6.6%	-	3.3%	1.9%
France	21.7%	-	31.8%	-
Germany	17.8%	4.0%	15.5%	3.6%
Ireland	18.0%	-	18.0%	-
Italy	5.9%	-	4.5%	0.3%
Japan	8.9%	0.5%	5.5%	0.2%
Luxembourg	12.2%	-	12.2%	-
Netherlands	5.5%	1.2%	7.3%	3.3%
New Zealand	34.4%	0.1%	34.4%	0.1%
Norway	3.0%	1.1%	6.8%	3.0%
Portugal	17.6%	0.1%	24.4%	2.5%
Spain	8.3%	0.9%	9.1%	0.7%
Sweden	8.4%	3.1%	7.6%	4.8%
Switzerland	3.0%	0.4%	4.5%	1.0%
United Kingdom	10.1%	-	9.4%	1.4%
United States	4.8%	1.8%	4.6%	1.8%
DAC average	11.2%	1.2%	10.8%	1.3%

Source: OECD/DAC, Development Co-operation, 1997 and 1998 Reports.

17. Table 2 illustrates differences in the orientation of aid for education. For donors such as New Zealand, Australia or France, aid includes a great deal of funding for students from developing countries in the donor country. Australia allocated 70 per cent of its aid to education to scholarships for foreign university students studying in Australia, while French aid for education benefited some 100,000 foreign students in France and 8,000 French teachers working

in French-speaking Africa [14]. Technical cooperation generally accounts for about two thirds of bilateral aid for education, with "60 to 80 per cent of all education aid commitments spent in recipient countries" [15].

18. Aid flows from the major donors for basic education (Sweden, Germany, the Netherlands and Norway) reflect congruence between declarations and allocations, and are likely to be reinforced by the recent shift to a sector-wide approach (already denoted by its own abbreviation as SWAP), under which it is aimed to abandon previous donor projects in favour of long-term budgetary support to the education sector as a whole, and to strengthen governmental structures rather than continuing parallel donors' set-ups. Different from what the name indicates, sector-wide approaches are routinely confined to basic education, which has become the priority for donors, at least at the level of policy. One reason for this is the size of each donor's contribution. All of them combined are often much too small to support a whole education sector. Another reason is that strategies for the entire sector of education have yet to be developed while the focus on basic education does not lead in this direction.

B. Concordance and discordance in international policies

19. Three major groupings generate common approaches for international cooperation and related definitions and statistics: OECD/DAC, the World Bank Group, and the United Nations Development Assistance Framework (UNDAF). Similarities and differences between the three do not cloak their parallel and separate existence. Similarities include a priority for basic education, as well as a great deal of attention to the education of girls; differences revolve around the basis for and the purpose of international cooperation.

20. Constantly diminishing aid flows have shifted international cooperation from seeking new and additional public funding to match the scope of the challenge to converting debt created through previous cooperation into funding that can be used in debtor countries. The ambitions have been lowered, as reflected in the postponement of the commitment to universal access to basic education from the year 2000 to the year 2015, in the shortening of schooling by two years (from the 6th to the 4th grade), and the marginalization of secondary education due to the focus on basic education. Since the focus of aid policies in the 1990s is poverty alleviation, while there are as yet no definitions and standardized measures on what anti-poverty aid means in theory and in practice, the impact on education is likely to be significant but as yet unpredictable. The Special Rapporteur feels that education cannot be expected to lead to poverty eradication before education itself is rescued from poverty.

21. As the Special Rapporteur noted in her preliminary report, UNICEF has had the pioneering role in adopting and conceptualizing rights-based programming. Amongst bilateral donors, the United Kingdom has led the way (E/CN.4/2000/6/Add.2, paras. 20-26). These initiatives may lead to the mainstreaming of human rights but, at present, the place of education in donors' policies exhibits a great deal of variety. Some subsume it under the meeting of basic human needs, others define education as a pillar of the development of human resources (or human capital), yet others view education as part of social development, while some see it as a path towards empowerment, especially for girls and women. This variance replicates the

proverbially large number of diverse domestic expectations of education but does not bode well for future international accomplishments, because the minute political and financial commitment to education cannot possibly meet such varied expectations.

22. An improvement towards concordance in international cooperation has recently been attained concerning debt relief. As the Special Rapporteur noted in her report on Uganda (E/CN.4/2000/6/Add.1, paras. 30-34), divergent policies of creditors and donors could, on the one hand, promote education through the allocation of savings from debt relief to increase enrolments in primary education while, on the other hand, aggravating the pupil-teacher ratio by inhibiting recruitment of teachers so as not to increase the civil service. Although the Special Rapporteur could not ascertain the figures, it is possible that the pupil-teacher ratio could have been 300 to 1 or even more. In September 1999, it was announced that Uganda would benefit from additional debt relief (an annual $80 million), which would enable the halving of the pupil-teacher ratio [16]. At the time, a new Poverty Reduction Growth Facility was announced in replacement of the Enhanced Structural Adjustment Facility (ESAF), with a promise that "social and sectoral programmes aimed at poverty reduction will be taken fully into account in the design of economic policies" [17].

C. The World Bank's education strategy

23. As announced in her preliminary report, the Special Rapporteur has carried out an analysis of the evolving World Bank approach to education because the Bank has become the major provider of loans for education, "the single largest source of finance for education" as it is fond of saying. The Special Rapporteur has established a dialogue with the World Bank and much correspondence has been exchanged with regard to the many questions which she has sought to clarify. Quite a few could not be clarified and the Special Rapporteur is therefore planning to visit the World Bank in January 2000 and will provide an update to this section of the report in her oral presentation before the Commission on Human Rights.

24. Two recent reports illustrate differences of approach within the World Bank on human rights. The Education Sector Strategy (published in July 1999) is silent on the World Bank's position, unlike Development and Human Rights: The Role of the World Bank (published in September 1998). The latter is apparently supportive of the Bank's engagement in human rights, the former not.

25. The Bank's Education Sector Strategy makes a factual statement that many States recognize the right to education, not adding the corresponding governmental obligation to secure that primary education is available to all school-age children, compulsory and free of charge, which is legally binding upon almost all the Bank's borrowers [18]. The Bank's commitment to ensuring that everyone completes "a basic education" reflects one component of international human rights law, which requires individual States to make primary education all-encompassing and to seek international cooperation if they are unable to comply with this obligation. The blurred boundaries between "basic" and "primary" education are reflected in the tendency to statistically confine basic education to the 6-11 age group, while its proper definition (primary and lower secondary school) has not yet generated internationally comparable data.

26. Another factual statement posits that Governments remain the largest funders of education. Funding is addressed in various parts of the Education Sector Strategy - free primary education not being advocated, as it had been by the Bank earlier from time to time,[19] but rather a line of argument being developed whereby fees paid by non-poor beneficiaries could facilitate the targeting of governmental funding towards the poor. This could imply that non-poor parents should pay fees, even if a State's international legal obligations and constitutional guarantees posit that primary education should be free of charge. The Bank's present position is unclear, at least to the Special Rapporteur. The Bank's own education lending does not prioritize primary education (it constitutes 30 per cent of education lending) nor the poorest countries (International Development Association loans account for 40 per cent of all lending for education). In the Special Rapporteur's view, the Bank's loans do not facilitate making primary education free of charge because loans have to be repaid while the ability of primary school leavers to generate income is insufficient to facilitate such repayment. More than half of the Bank's education lending is concentrated in the seven biggest borrowers (Argentina, Brazil, Mexico, India, Indonesia, Thailand and Turkey), none of them in Africa and none of them among the least developed countries.

27. The Bank's Education Sector Strategy does not refer to individual rights and freedoms guaranteed under international human rights law, whether those of learners, their parents or teachers. The factual reference to the fact that forgetting teachers' salaries and conditions can "grind change to a halt" hints at the frequent practice of not involving teachers in educational reform and its detrimental consequences. A subsequent reference includes teachers in "consultation with the civil society",[20] but there is no mention of applicable law. The protection of the teachers' freedom of association (as developed by the International Labour Organization) is legally enforceable, domestically and internationally. In the Special Rapporteur's view, education is not exempt from the rule of law. Since the Bank has explicitly committed itself to ensure that human rights are fully respected in projects which it supports, the absence of an explicit recognition of the rights that ought to be respected creates a risk that such rights may be violated because the staff designing and implementing projects have not been informed that such rights are universally recognized and ought to be respected. Initial steps have been outlined in-house for other human rights issues,[21] and it is thus not self-evident - at least not to the Special Rapporteur - why human rights problems that typically emerge in education have not been addressed.

28. A possible conflict between different (non-rights-based and rights-based) approaches can be described taking the language of instruction as an example. The World Bank praises the flourishing private sector publishing industry as the supplier of textbooks but also emphasizes the language barriers which are a considerable obstacle for many learners.[22] It is estimated that 90 per cent of learners in Africa are not completely familiar with the major languages of instruction and publishing, which also happen to be the colonial languages. Because the publishing industry flourishes in big international rather than small minority languages, a clash between these two objectives - a flourishing private sector publishing industry and instruction in indigenous/minority languages - is inevitable in the view of the Special Rapporteur. For its part, the content of school textbooks is defined as a "technical" issue by the World Bank, despite its well-known political sensitivity. More importantly, retrospective studies of genocide and inter-ethnic or inter-religious warfare have often identified school textbooks as a factor leading to warfare or genocide. Failure to address such issues can thus be deadly.

29. Addressing the human rights dimensions of education reduces the risk of unknowingly supporting education that amounts to brainwashing, or schooling that actually does not happen because teachers have not been paid for months or years. The human rights rationale builds upon good professional standards in education, although it goes beyond. The Special Rapporteur is concerned about the blurring of the roles of States and non-State actors. A reference in the Bank's Education Sector Strategy to the commitments by "155 nations and 150 NGOs"[23] obfuscates the role of States, whose human rights obligations have generated a great deal of domestic and international jurisprudence, as the following section demonstrates.

III. REALIZATION AND LEGAL ENFORCEMENT OF THE RIGHT TO EDUCATION

30. As the Special Rapporteur noted in her preliminary report, the general question of whether economic, social and cultural rights are justiciable does not apply to the right to education, which is litigated both domestically and internationally. Owing to space constraints, the Special Rapporteur has included in this report only a couple of references to pertinent court cases through which various dimensions of the right to education have been enforced.

31. The adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women[24] promises to increase international remedies for gender discrimination. It has also reinforced the conceptual universality of human rights because remedies will be provided for civil and political, as well as economic, social and cultural rights. On the domestic level, Norway has set a commendable precedent, having incorporated in its domestic law both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[25] Such developments promise to broaden and strengthen the work of domestic courts which have mapped out the nature and scope of the right to education.

A. Availability

32. As the Special Rapporteur has emphasized in all her previous reports, the obligation of the State to make schooling available constitutes one pillar of the individual right to education, and the failure of the State to sustain available schooling constitutes an apparent violation of the right to education. The African Commission on Human and Peoples' Rights found that a two-year-long closure of universities and secondary schools in Zaire (as it was at the time) constituted a violation of article 17 of the African Charter on Human and Peoples' Rights, which guarantees the right to education.[26]

33. States' practice with regard to ensuring that schools are available for all school-age children reveals a variety of models: the State can fund diverse schools but not operate any, or operate a network of State schools without funding any non-State schools. The extremes of a State's monopoly over education or its complete dissociation from education, neither of which would be consistent with international human rights law, are rare. Between these two extremes, the existing jurisprudence has laid down general principles for the interpretation and application of international human rights law.

1. Public funds and private schools

34. Much international jurisprudence has originated from demands upon States to finance education developed as an alternative to uniform public schooling. A variety of models developed in Western Europe, in part due to the "principle of subsidiarity according to which the State filled the gaps left by private sector provision (private and church schools)".[27] The emergence of the State as the funder and/or provider of education is fairly recent in the history of education. The inherited mosaic of pre-State provision of education has greatly influenced this variety of models. Free education is generally conceptualized in terms of access to public schools, with States' practice varying with regard to subsidies for non-public schools. The distinction between free (State school) or fee-paying (private) schooling has been widely recognized worldwide.[28]

35. The jurisprudence focusing on public funding to facilitate the exercise of freedom to establish and operate schools guaranteed under international human rights law has overcome a boundary between civil and political rights, which are often perceived as being costless, and economic, social and cultural rights, viewed as costly. In the Special Rapporteur's view, it has thereby reaffirmed the indivisibility of human rights in general, as well as within education.

36. The Human Rights Committee found that a State "cannot be deemed to act in a discriminatory fashion if it does not provide the same level of subsidy for the two [public and private] types of establishment, when the private system is not subject to State supervision". In a similar case, which dealt with the provision of free textbooks and school meals to children in public but not in private schools, the Committee affirmed its previous view, adding that "the preferential treatment given to public sector schooling is reasonable and based on objective criteria"[29] This affirmation of the priority of public over private schools goes beyond funding: the role of education in the socialization of children prioritizes inclusiveness over segregation. In the well-known words of the Supreme Court of the United States, "separate educational facilities are inherently unequal".[30]

37. The European Commission on Human Rights has during its previous existence affirmed that the State has no obligation to subsidize private schools while it has a right to subject such schools to regulation and supervision because it is responsible for ensuring that all education complies with prescribed standards.[31] Domestic courts have been dealing with this subject-matter in different countries and have followed the thrust of international human rights law. The Supreme Court of Canada, having examined a complaint against a denial of public funding to private religious schools, has affirmed that the purpose of public schools is provision of education for all members of the community. The exercise of parents' freedom to educate their children in accordance with their religious beliefs in separate schools (or at home) prevents their children from taking advantage of public schools and creates costs for the parents; such exercise of parental freedom does not entail an entitlement to public funding, however.[32]

38. Moreover, the existing jurisprudence probes into issues which lie at the boundary between political and legal processes. Resource allocation is generally seen as a political decision and unelected courts cannot usurp the prerogatives of elected parliamentarians. Court cases which have halted the allocation of State funds to private schools or required Governments

to strengthen public schools have imposed human rights correctives upon resource allocation, however. Such court cases have often been a response to the recent trends of privatization and commoditization of education, and especially to international endorsements of school vouchers.

39. Through the voucher schemes, Governments enable individual learners to make payments to the school of their choice, or make payment directly to the chosen school. The amount of payments usually corresponds to the admission and/or tuition costs. The rationale for school vouchers is enhancement of consumer (in this case parental) choice and an assumed enlargement of this choice through competition amongst schools. An additional, albeit implicit reason, has been a wish to subject public schools to competition, their being seen as having monopolized schooling. The distinction between public and private, State and non-State, fee-charging and free schools - and the diversity which they embody - is likely to be eroded if proposals for introduction of vouchers gain ground; only schools able to attract learners and/or funding will be left. The rationale behind vouchers perceives States as merely providing some funding to learners or schools to the detriment of the full range of the States' human rights obligations, namely to ensure that schooling is available, accessible, acceptable and adaptable.

40. The ongoing debate about school vouchers started within the realm of economics, focusing on consumer choice and competitiveness while excluding the notion of education as a public good.[33] Court cases have brought the issue into the realm of the rule of law. The voucher scheme introduced in 1993 in Puerto Rico was declared unconstitutional in the part which accorded to selected pupils a financial grant of $1,500 for transfer from public to private school.[34] The constitutional prohibition on diverting public funds to private schools reached back to the separation between church and State and was upheld, although the voucher scheme did not revolve around secular or religious schools. Rather, it was aimed at financially stimulating transfer from public to private schools (thus also transferring tax revenue to private schools) with the aim of increasing choice, contrary to the constitutional requirement that public funds be used solely for public schools.

41. Controversies relating to vouchers routinely revolve around economic arguments, thus departing from the meaning and purpose of the right to education. Amongst the existing jurisprudence, the Supreme Court of Colombia has ably clarified why education should not be governed by economic arguments alone:

> "... although the Constitution protects economic activities, private initiative and competition as well as recognizing the right of private entities to establish schools, these liberties cannot negate nor can they diminish the nature of education as public service and its social function; education is also and above all else a fundamental right.
>
> "... education - even if private - has to be provided in the conditions which guarantee equality of opportunity in access to education, and all forms of discrimination and 'elitism' are thus repugnant to its nature of public service with profound social contents; these, by virtue of excessive economic demands, automatically deny access to intellectually able persons solely because [of] their levels of income."[35]

2. The status of teachers

42. Although it is possible to imagine schooling taking place without schools but not without teachers, the attention to schools and textbooks in international education strategies is immense while they are relatively silent about teachers. Teaching is a labour-intensive profession and the Special Rapporteur is not convinced that recent ideas about replacing humans by technological devices will ever materialize, nor that they would be beneficial if they do materialize. For schooling that takes place without a school, water, sanitation, desks and chairs, books, blackboards, pens and paper, a teacher makes all the difference and the absence of a teacher prevents schooling from taking place. For teenagers in OECD countries who have replaced socialization by surfing the web, the Special Rapporteur has not seen a single piece of evidence claiming benefits for their social skills, tolerance or even basic literacy.

43. The advantage of teaching being labour-intensive is that employment of large numbers of people is possible - even necessary - to educate the millions of children and young people in the world. Since teachers are locally trained, hired and paid, there is the additional advantage that there is no need for foreign exchange, unlike for schools or schoolbooks that may be provided through loans which have to be repaid, or which may have to be imported. It seems, however, that instead of being seen as actors indispensable for schooling, teachers are often perceived as enemies of their own vocation. One reason for this view of teachers as a burden rather than an asset is the sheer size of the teaching profession and the proportion of education budgets allocated to teachers' salaries. In a country where school-age children represent one third of the population, a ratio of one teacher to every 50 children makes teachers 0.6 per cent of the population. As there is little besides teachers in the schooling process in many poor countries, teachers' salaries necessarily form the bulk of the education budget.[36] The consecutive crises through which education has passed in recent decades has triggered a constant search for ways of cutting education budgets. Because teachers' salaries constitute the bulk of education budgets, they were the obvious first target for budgetary cuts.

44. The protection of the human rights of teachers sometimes slips into oblivion if teachers are considered as "a production factor" rather than as people. The applicable international human rights standards are many because the problems teachers encounter are complex and multi-layered. They range from discrimination on the internationally prohibited grounds to teachers' recruitment and deployment, to the protection of professional and academic freedom, or to the role of teachers in human rights education. Problems in their enforcement have included teachers' status as civil and/or public servants leading to the denial of their trade union freedoms, or the definition of teaching as an essential service leading to the denial of their right to strike.[37]

B. Accessibility: school fees

45. Where schools and teachers are available, access to schooling can be impeded by a variety of obstacles. As announced in her preliminary report, the Special Rapporteur is focusing in the present report on school fees. Much concern followed their introduction in the 1980s for previously free primary education, resulting in decreased enrolments and reduced access to primary schooling. International mobilization for "adjustment with a human face", as UNICEF

aptly put it, led to a general acceptance of the need to protect primary education from budgetary cuts, but the Special Rapporteur feels that insufficient attention has been paid to ensuring that school fees are indeed abolished as international human rights law requires.

46. The explicit wording of international human rights treaties requires primary education to be compulsory and free of charge. The assumption that compulsory schooling equals primary education in length is, however, no longer valid. It bears repeating that the Special Rapporteur's mandate is oriented towards progressive implementation of compulsory education free of charge.[38] Table 3 highlights correspondence between the length of primary and compulsory schooling, as well as differences between the two. In the majority of countries for which data are available (96), compulsory schooling has been lengthened far beyond primary schooling. The trend of lengthening compulsory schooling follows a double rationale: on the one hand, the raising of the school-leaving age prevents children from venturing into adulthood too early (be it in employment or marriage), on the other hand, it provides all children with a common core education, in the inclusive ideal in the same school and classroom also. Countries in which the two remain equal in length (60) have become a minority; in more than 40 countries education is compulsory for six years or less, while just under 40 countries have lengthened compulsory education to 10 years or more. The Special Rapporteur deems that these data merit emphasizing because the emerging international consensus on securing basic education for all, free of charge, could have two effects: it could confine guaranteed schooling to the 6-11 age group if the prevalent statistical definition is applied, or it could prolong it beyond primary to lower secondary education if the desirable definition of basic education (up to 15 years of age) prevails, keeping children in school till they reach the minimum age for employment.

47. Table 3 reflects to a large extent the economic capacity of individual countries to provide their young generation with schooling. Countries in which compulsory schooling is the shortest (such as Bangladesh, the Lao People's Democratic Republic, Nepal or Viet Nam) share financial obstacles to lengthening education, while the tendency in Western Europe to extend compulsory education beyond 10 years (in Belgium, Germany and the Netherlands, for example) reflects the necessary merger of willingness and ability to do so. This issue has obtained increasing importance at the turn of the millennium with the switch towards knowledge-based economy, society or development in general, and is revisited in section IV below.

48. Considerations of affordability pervade any analysis of free-of-charge education and many questions have been raised in the past few decades about compatibility between fiscal and educational policy, that is, between fiscal targets defined in terms of reducing public expenditure and the funding necessary to ensure universal primary education free of charge. The global consensus on the need to make and keep primary education free of charge was ruptured in the early 1980s. Most analysts attribute the advocacy for school fees to the World Bank's research and policy-making for Africa[39] and a great deal of critique followed the linkage between school fees and structural adjustment programmes. This is well known and can be omitted. Rather, the Special Rapporteur would like to note that the critique of school fees has had the unanticipated effect of subsequently diminishing the availability of information about them.[40]

Table 3. Correspondence and difference between primary and compulsory schooling

Countries with equal length of compulsory and primary schooling	Albania (8), Bangladesh (5), Benin (6), Bolivia (8), Brazil (8), Burundi (6), Cameroon (6), Cape Verde (6), Central African Republic (6), Chad (6), Chile (8), Colombia (5), Côte d'Ivoire (6), Djibouti (6), El Salvador (9), Equatorial Guinea (5), Ethiopia (6), FYR of Macedonia (8), Guatemala (6), Guinea (6), Guinea-Bissau (6), Haiti (6), Honduras (6), Iran (5), Iraq (6), Jamaica (6), Kenya (8), Lao PDR (5), Lesotho (7), Libya (9), Malawi (8), Mauritania (6), Mexico (6), Morocco (6), Myanmar (5), Nepal (5), Nicaragua (6), Nigeria (6), Panama (6), Paraguay (6), Philippines (6), Peru (6), Poland (8), Samoa (8), Sao Tome and Principe (4), Senegal (6), Sudan (8), Suriname (6), Swaziland (7), Syria (6), Tanzania (7), Thailand (6), Togo (6), Trinidad and Tobago (7), United Arab Emirates (6), Uruguay (6), Vanuatu (6), Viet Nam (5), Yemen (9), Zambia (7)
Countries where compulsory schooling is longer than primary schooling	Antigua and Barbuda (10-7), Algeria (9-6), Argentina (10-7), Armenia (11-4), Australia (10-7), Austria (9-4), Azerbaijan (11-4), Bahamas (9-6), Bahrain (9-6), Barbados (11-7), Belarus (9-4), Belgium (12-6), Belize (10-8), Brunei Darussalam (12-6), Bulgaria (8-4), Burkina Faso (7-6), Canada (10-6), China (9-5), Comoros (9-6), Congo (10-6), Costa Rica (10-6), Croatia (8-4), Cuba (9-6), Cyprus (9-6), Czech Republic (9-4), Denmark (9-6), Dominica (11-7), Dominican Republic (10-8), Ecuador (10-6), Egypt (8-5), Eritrea (7-5), Estonia (9-6), Fiji (8-6), Finland (9-6), France (10-5), Gabon (10-6), Germany (12-4), Georgia (9-4), Ghana (8-6), Greece (9-6), Grenada (11-7), Guyana (8-6), Hungary (10-4), Iceland (10-7), India (8-5), Indonesia (9-6), Ireland (9-6), Israel (11-6), Italy (8-5), Japan (9-6), Kazakhstan (11-4), Kiribati (9-7), Kuwait (8-4), Kyrgyzstan (10-4), Lebanon (9-5), Liberia (10-6), Lithuania (9-4), Luxembourg (9-6), Madagascar (6-5), Mali (9-6), Malta (11-2), Mauritius (7-6), Moldova (11-4), Monaco (10-5), Mongolia (8-4), Mozambique (7-5), Namibia (10-7), Netherlands (13-6), New Zealand (10-6), Niger (8-6), Norway (9-6), Portugal (9-6), Republic of Korea (9-6), Romania (8-4), Russia (9-3), Seychelles (10-6), Slovakia (9-4), Slovenia (8-4), South Africa (9-7), Spain (8-6), Sri Lanka (9-5), St Kitts and Nevis (12-7), St. Lucia (10-7), St. Vincent and the Grenadines (10-7), Sweden (9-6), Switzerland (9-6), Tajikistan (9-4), Tonga (8-6), Tunisia (9-6), Turkey (8-5), Ukraine (9-4), United Kingdom (11-6), United States (10-6), Venezuela (10-9), Zimbabwe (8-7), Yugoslavia (8-4)

Source: UNESCO, World Education Report 2000, table 4, pp. 134-137.

Note: This table reproduces data on the length of compulsory and primary schooling, available from UNESCO, which originate from ministries of education and thus do not necessarily match those reported by the same countries under the human rights treaties. The first number in parentheses after the country names refers to the length of compulsory schooling in years and the second to the length of primary schooling. The only countries where primary schooling seems to be longer than compulsory schooling are Jordan (9-10), Rwanda (6-7) and Tuvalu (7-8).

49. While international law requires primary education to be free of charge, education cannot be free of cost in theory or in practice. For Governments, it is one of the major items in their budgets and public investment in education represents between 80 and 90 per cent of the total. Parents finance their children's education through general taxation, sometimes also paying additional charges but always funding the cost of education beyond the Government's contribution. What is recorded as governmental investment (often called expenditure) is supplemented by parents, who bear the cost of books, transportation and school meals, uniforms, pens and pencils, or sports equipment.

50. As the Special Rapporteur noted in her preliminary report, the requirement upon Governments to make primary education free implies that Governments should eliminate financial obstacles in order to enable all children - no matter how poor - to complete primary schooling. The link between primary education being free and compulsory is emphasized in all three pertinent human rights instruments.[41] Imposing a requirement upon children to attend school whose cost their parents cannot afford would make compulsory education illusory.

51. The reservations to the two global human rights treaties with regard to making primary education free and compulsory indicate the general acceptance of this postulate.[42] As noted above, the mosaic of diverse pre-State schools such as existed in Western Europe at the time when the provision on the right to education was drafted (1950-52) influenced the approach to the role of the State under the European Convention on Human Rights,[43] and reservations thereto have affirmed States' reluctance to finance diverse schools that tend to emerge from the exercise of parental freedom of choice.[44] The fact that most States have committed themselves to ensuring free primary education affirms the explicit wording of global human rights treaties, and one can thus look further into what the meaning of "free" is in the practice of States.

52. In the Special Rapporteur's view, school fees represent a form of regressive taxation. Their justification routinely points to the inability (or unwillingness) of a Government to generate sufficient revenue through general taxation. Payment for primary schooling ruptures the key principle of taxation whereby people who cannot contribute to public services that are meant for all are not required to do so. School fees are most often charged for enrolment, tuition and examinations. Where tuition is free, charges can be levied for the use of educational facilities and materials (such as laboratories, computers or sports equipment), or for extracurricular activities (such as excursions or sports events), or generally for educational development or school maintenance. Such fees can sometimes seem minuscule (for example, $4 per year) from the viewpoint of people whose annual income is expressed in six or more digits, but they represent a considerable burden for parents whose annual income is written in three digits or less, particularly because these charges are added to all the other costs of their children's education which they have to bear. There is little information available about the financial costs of the administration and collection of such school fees in small and remote primary schools. Whether the imposition of such fees has proved too costly in every sense of this term remains an open question.

53. School fees at the primary school level are charged in a number of countries and this practice is reflected in the documentation generated by the reporting procedures under human rights treaties.[45] The Special Rapporteur has opted for this source of information because it is authoritative, although not comprehensive in coverage. Only those countries which included

information about school fees in their reports or in responses to queries from treaty bodies have been included, if their reports were available at the time of writing. The information in cited documents applied at the time the reports were submitted or discussed and the situation may have changed in the meantime. The coverage is illustrative rather than comprehensive and the Special Rapporteur will be grateful for all corrections and additions.

54. For some countries, an explicit reference to the charging of some form of school fees could be found in the documentation,[46] for others it is unclear what type of fees, levies or contributions are being charged and whether financial contributions by parents that are described as voluntary can be made or withheld without having any effect on their children's schooling.[47] Besides school fees, levies or contributions in their different guises, direct costs of education include textbooks (which are provided free of charge in some countries, while they are subsidized in many),[48] supplies and equipment (notebooks, sketchbooks, pens and pencils), transportation (provided free of charge in few countries), meals (also provided free of charge in some countries, sometimes as an inducement to parents to send their children to school) and school uniforms where these are required for school attendance. These costs can be prohibitively high, as has been noted quite a few times in the context of the reporting procedures of the human rights treaty bodies[49] and they have broadened the question of the meaning of free education beyond school fees; financial barriers to access to primary education result in the lack of access to school for poor children and thus retrogression rather than progressive realization of the right to education.

55. States' practice also includes examples of the elimination of financial barriers to access to education, in the form of subsidies to poor families to enable them to send their children to school.[50] Such subsidies are intended to eliminate all direct and indirect costs of primary education, compensating families for the opportunity cost of schooling children. The general idea that costs of education should be borne in proportion to financial ability thus found expression in subsidies to the poorest so as to redress their inability to dispense with the children's contribution to the survival of the family. This issue is revisited below in section III D on working children.

C. Acceptability: pregnancy as a disciplinary offence

56. The Special Rapporteur has noted in all her previous reports the constantly increasing attention to girls' access to school and their persistence in schooling and will review recent developments in her next report. She deems it necessary to move beyond availability and accessibility, and has chosen pregnancy as a disciplinary offence because it points to questioning the acceptability of school discipline, as well as the general orientation of education.

57. The Commission on Human Rights has emphasized the role of education in enhancing the ability of women to make informed choices.[51] The practice of defining pregnancy as a disciplinary offence routinely leads to the expulsion of the pregnant girl from school, sometimes precluding her from continuing education. The lack of access to information that would have enabled the girl to make any choice, least of all an informed one, is usually the background to this practice. The frequent clash between societal norms which pressurize girls into early pregnancy and legal norms which aim to keep them in school makes this phenomenon difficult to tackle. Moreover, the practice of expelling pregnant teachers from school forms part of not too

distant history and points to the heritage of precluding the exposure of schoolchildren to pregnancy. If the expulsion of pregnant schoolteachers seems to have become history, this is not so if teachers are not married.[52]

58. Information about the definition of pregnancy as a disciplinary offence leading to expulsion from school is regretfully fragmentary. As far as the Special Rapporteur could ascertain for Africa (although the available information is scarce and outdated), pregnant girls are expelled from primary and secondary schools in Liberia, Mali, Nigeria, Swaziland, Tanzania, Togo, Uganda and Zambia, while change has been introduced in Bolivia, Botswana, Chile, Côte d'Ivoire, Guinea, Kenya and Malawi.[53] Such information is usually collected as the first step towards affirming the girls' right to education. The coming into force in November 1999 of the Charter on the Rights and Welfare of the African Child, which includes an explicit requirement that States ensure that pregnant girls have an opportunity to continue with their education, is likely to increase the momentum for change.

59. Change does not come easily. The views of parents, teachers and community leaders tend to support the expulsion of pregnant girls from school, rationalizing this punitive choice by the need to uphold a moral norm which prohibits teenage sex - pregnancy being considered as irrefutable proof that this norm was breached and as entailing punishment. Punitiveness sometimes also encompasses schoolboys who father children, but never adult men who seem responsible for most teenage pregnancies, more than 70 per cent in Botswana.[54] Societal norms are not automatically changed through the adoption of international or domestic guarantees of the equal right to education for girls nor are they usually altered through democratic decision-making, in which girls routinely do not have a voice. Law thus provides a good starting point for the process of change.

60. The Supreme Court of Colombia has established an important precedent by demanding that school regulations, which envisaged penalization of pregnancy by suspending pregnant girls from schooling and rerouting them into tutorials, should be altered and the pregnant girls to whom they were applied returned to normal schooling. The opinion of the Court is worth quoting because of its importance for the interpretation of the nature and scope of the pregnant girls' right to education:

> "... although a suspension from school attendance does not imply a definitive loss of the right to education, it does imply the provision of instruction to the pregnant schoolgirl in conditions which are stigmatizing and discriminatory in comparison with other pupils in her ability to benefit from [the right to education]. Surely, the stigmatization and discrimination implied in the suspension from school attendance have converted this method of instruction into a disproportionate burden which the pupil has to bear solely because she is pregnant, which, in the opinion of the Court, amounts to punishment.
>
> The conversion of pregnancy - through school regulations - into a ground for punishment violates fundamental rights to equality, privacy, free development of personality, and to education."[55]

D. Adaptability: education for working children

61. The Special Rapporteur has closely observed recent developments with regard to the elimination of child labour, especially linkages which are being forged between schooling and working. These span a negative dimension (enforcement of the prohibition of exploitative child labour), as well as a positive one (provision of schooling to working children). The adoption of ILO Convention No. 182[56] reinforced the definition of a child as a person up to the age of 18 with respect to safeguards against intolerable forms of child labour, re-emphasized States' obligations to ensure access to free basic education for all children, and mandated vocational training for children removed from labouring.

62. The International Labour Organization has reinforced its early link between the age for completion of compulsory education and the minimum age for employment,[57] and the Special Rapporteur has exerted a great deal of effort to attain acceptance of this link in international education strategies. As she has pointed out many times, the shift to "basic" from primary and/or compulsory education has had the detrimental side effect of lowering the school-leaving age and thus leaving children in limbo until they reach the minimum age of employment.

63. ILO-IPEC aims to set in motion "a process geared to reform and change in social attitudes and in public and corporate policies that will lead to sustainable prevention and abolition of child labour from within a country".[58] Both prevention and abolition of child labour have posed additional challenges to education. Prevention of child labour necessitates a conceptual shift in the orientation of education towards the acknowledgement of one simple fact: "the unavoidable labour reality is very much local",[59] and any global or foreign models require adaptation to that local reality. The dominant trend in human rights towards conceiving work as access to employment in the formal sector rather than self-employment in the informal sector (whether subsistence or entrepreneurship) does not provide a promising background for responding to this challenge nor does the heritage of designing primary education so as to lead pupils to secondary and higher education. Adaptability is often hampered by school curricula "developed centrally by groups of 'experts' who design them to prepare children for the next level of education, to which many children will be unable to proceed".[60]

64. Opportunities for working children to "learn and earn"[61] have been grounded in the necessity for poor people - including children - to work so as to be able to survive. Full-time education then appears to be a luxury rather than a basic right of the child, and changing that cruel reality requires a great deal of political and financial commitment. The Supreme Court of India has accepted this "learn and earn" approach for non-hazardous employment of children below 14 years of age, mandating a reduction of daily working hours to six, coupled with at least two hours of education at the expense of the employer. For hazardous work, the Court has recalled that child labour could not be eliminated without tackling underlying poverty and suggested ensuring work for an adult member of the family in lieu of the child or, if this is impossible within the limits of the economic capacity of the State, the provision of a minimum income to the family in order to enable them to send the child to school payable as long as the child is attending school.[62]

65. Adaptation of education to local circumstances requires protection against the institutionalization of disadvantage which can result in "educational ghettos".[63] A shift away from denigrating vocational education as inferior to academic education is necessary, as is the acceptance of resource requirements for in-school vocational education and training. The increasing shortage of public sector jobs worldwide is likely to facilitate altering the inherited hierarchy within education, which prioritized general at the expense of vocational education.

IV. THE CHANGING LEGAL STATUS OF EDUCATION AND THE NEED TO MAINSTREAM HUMAN RIGHTS

66. The definition of education as a human right does not guide many international or domestic education strategies; the recent emergence of a focus on education as a means for creating human capital and the prospect of education being purchased and sold as service create a great challenge for reaffirming education as a human right and as a public good. Contemporary changes can be illustrated by the usage of the term "rights" to denote shareholders' or creditors' rights,[64] rather than in the sense attributed to this term in international human rights law. The Special Rapporteur welcomes the initiative of the Sub-Commission on the Promotion and Protection of Human Rights in placing globalization and trade liberalization on the human rights agenda with a view to "fully integrating human rights in the processes of economic policy formulation" as well as ensuring that "human rights principles and obligations are fully integrated in future negotiations in the World Trade Organization".[65]

A. Implications of the human capital approach

67. The Special Rapporteur has consistently held that the notion of human capital questions the inherent worth of each human being which underpins human rights, as well as undermining the role of education in the promotion and protection of human rights. She feels that an appropriate human rights response to the notion of human capital[66] ought to be forged, lest the underlying idea of the market value of human capital risks turning upside-down the idea that the economy should serve people rather than the other way around. The human-capital approach moulds education solely towards economically relevant knowledge, skills and competence, to the detriment of human rights values. Education should prepare learners for parenthood or political participation, enhance social cohesion and tolerance. A productivist view of education depletes it of much of its purpose and substance.

68. The literature on human capital has evolved in the past decades from the relationship between education and income, focusing on the economic value of schooling and/or the rate of return on schooling, especially private, to then affirm generally "the productive utility of human knowledge".[67] This is, in the Special Rapporteur's view, only one out of many purposes of education. Such reductionism precludes defining education in terms of the full development of the human personality, frustrating the creation of foundations for human rights education by teaching learners to share knowledge rather than trade it, and to cooperate rather than to compete.

69. The human-capital approach has revealed the importance of public investment in education,[68] as well as disparate prospects for attaining knowledge-based economies in the world. The priority in current international education strategies for basic education fares ill

against findings that the foundation necessary to enable individuals "to build up their human capital" is upper-secondary education [69] Public investment in education has led to the completion of upper-secondary education by more than half of the working-age population in the OECD countries. As table 4 shows, OECD countries have moved to almost all-encompassing enrolment at the secondary level, while for most developing countries, not even data on these enrolments are available.

Table 4. Net enrolments in secondary education

above 90%	Canada, Cyprus, Czech Republic, Denmark, Finland, France, Netherlands, New Zealand, Norway, Republic of Korea, Sweden, United Kingdom, United States
80 - 90%	Australia, Austria, Bahrain, Belgium, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Poland
70 - 80%	Bulgaria, Georgia, Indonesia, Iran, Latvia, Malta, Portugal, Romania, United Arab Emirates
60 - 70%	Brunei Darussalam, China/Hong Kong SAR, Croatia, Egypt, Guyana, Kuwait, Luxembourg
50 - 60%	Algeria, Chile, Mexico, Mongolia, Peru, Philippines, Turkey, South Africa, the former Yugoslav Republic of Macedonia
40 - 50%	Botswana, Cape Verde, Colombia, Costa Rica, Indonesia, Saudi Arabia
20 - 40%	Dominican Republic, El Salvador, Laos, Namibia, Paraguay, Swaziland, Syria, Venezuela
less than 20 %	Djibouti, Eritrea, Lesotho, Mozambique, Niger

Source: UNESCO, World Education Report 2000, table 6, pp. 142-145.

Note: These data refer to 1996. No data available for most developing countries.

B. International trade in education services

70. The abyss between knowledge-based and education-deficit regions and countries is not likely to narrow spontaneously, it is likely to increase. International trade in education services is emerging as a principal means increasing this abyss. The globalization of professional and academic qualifications has been based on "a relatively uniform culture, set of business practices and language" [70] and has re-actualized the phenomenon of brain drain. many

developing-country students acquiring OECD degrees will stay where they studied, which led the World Bank to suggest expatriate nationals as an important channel for the acquisition of knowledge by developing countries.[71]

71. The linkage between aid for education and trade in education services stems from donors' allocations for students from developing countries (discussed in section II.A above), such funding may be portrayed simultaneously as aid and export revenue. Diminished donor funding for higher education in developing countries leads to increased numbers of students from these countries studying abroad. A further link originates in diminished public funding for higher education in donor countries, which pressurizes educational institutions to seek ways to overcome financial shortfalls, including through exporting their services. This circulus inextricabilis has attained attention recently and too little is known about it as yet. Data ought to be compiled and collated from a maze of public and private institutions, a further inherent difficulty being the protection of the commercial confidentiality of such data. More importantly, the underlying conceptual change treats education as a commodity to be sold and purchased, and necessitates, in the view of the Special Rapporteur, reaffirmation of education as a right.

CONCLUDING REMARKS

72. Limitations of space require a great deal of omission in describing pertinent developments and summarizing relevant qualitative and quantitative information, as well as necessitating superficial treatment of complex issues. These limitations are beyond the Special Rapporteur's influence.

73. The Commission's initiative with regard to a seminar on indicators relating to the right to education[72] regretfully did not materialize. The Special Rapporteur feels that the vast amounts of data which are being internationally generated within the field of education do not conform to the human rights approach to education, and a conceptual challenge remains for the human rights community to design indicators that would capture the essence of the right to education and human rights in education. She is planning to address this issue in her next report.

74. The Special Rapporteur has continued her review of the right to education worldwide by focusing on international and domestic dimensions in conjunction. This report has outlined major ongoing developments, it will be complemented by an update in her oral presentation to the Commission in April 2000, on the eve of the Education for All Conference in Dakar.

75. It bears repeating that the Special Rapporteur has undertaken an in-depth study of States' practice in the interpretation and enforcement of the right to education. Only a few issues have been highlighted in the present report. Bearing in mind the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, the Special Rapporteur is planning to analyse in her next report the existing jurisprudence relating to the orientation and content of educational curricula and textbooks, with a view to ensuring their conformity with the requirement of elimination of all forms of discrimination.[73] As noted above, she has already scheduled a meeting with the Committee on the Elimination of Racial Discrimination, and is also

planning to liaise and coordinate her work with the Sub-Commission on the Promotion and Protection of Human Rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. She is also planning to concentrate on methods of instruction, with special focus on corporal punishment and prevention of violence in school, which has generated jurisprudence in all the regions of the world.

Notes

[1] Commission on Human Rights resolution 1999/25 of 26 April 1999, entitled "Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights".

[2] Commission on Human Rights resolution 1999/80 of 28 April 1999, entitled "Rights of the child", section V, "Promotion of the right of the child to education", paras. 37 (a) and (c).

[3] The Special Rapporteur is thankful to the Swedish International Development Agency (SIDA) for funding research assistance for her mandate, the acquisition of documentation as well as travelling expenses, without which she would not have been able to carry out her mandate. She also acknowledges the debt of gratitude she owes to her research assistant, Sara Gustafsson of the Raoul Wallenberg Institute, for the enormous amount of background research she has done.

[4] Committee on Economic, Social and Cultural Rights, General comment 11 (1999). Plans of action for primary education (article 14 of the Covenant) (document E/C.12/1999/4 of 10 May 1999) and General comment No. 13 (Twenty-first session, 1999). The right to education (article 13) (document E/C.12/1999/10 of 8 December 1999).

[5] IWGE, Selected Issues in Development Assistance to Education. Meeting of the International Working Group on Education (IWGE), Nice, France, 6-8 November 1996, International Institute for Educational Planning, Paris, 1997, pp. 35 and 37.

[6] In some countries a census has not been held for more than 15 years (in Angola and Lebanon not since 1970; in Cuba, Sri Lanka and Togo not since 1981; in Burma/Myanmar not since 1983, in Congo/Brazzaville, Congo/Kinshasa, and Ghana not since 1984; in Sierra Leone not since 1985) and in more than 30 countries a decade has passed since the latest census, without a new one being carried out. More than 80 countries are lacking or have an incomplete vital registration system. (The World Bank, World Development Indicators 1999, Washington D.C., March 1999, pp. 373-379).

[7] Education at a Glance - OECD Database 1999, CD-ROM. The World Education Indicators Programme (WEI), coordinated by OECD and UNESCO, has enabled the first comparisons between OECD countries and some developing countries (Argentina, Brazil, Chile, China, India, Indonesia, Jordan, Malaysia, Paraguay, the Philippines, Uruguay and Thailand), also including Russia.

[8] The Special Rapporteur is referring to divergent statistical categorization of children for the purposes of schooling throughout this report, which is necessitated by different actors using different categorizations. She has consistently objected to the use of the 6-11 age-range because it implicitly endorses a school-leaving age which is much lower than the internationally defined minimum age for employment. The 5-15 age-range referred to here is derived from OECD, and the school-leaving age corresponds to the minimum age for employment.

[9] UNESCO's World Education Report perceptively observed that "the adult population is running out of people to educate" and attention in OECD countries has switched to prolonging education throughout adulthood. (UNESCO, Teachers and Teaching in a Changing World. World Education Report 1998, Paris, 1998, p. 29).

[10] "Handover of 17 million signatures to Chancellor Gerhard Schroeder in Cologne, 19 June 1999", (http://www.jubilee2000uk.org).

[11] This campaign was launched by Education International, Oxfam, Action Aid, the Global March against Child Labour, the South African NGO Coalition, the Bangladeshi Campaign for Popular Education and the Brazilian National Campaign for the Right to Education.

[12] OECD/DAC, Development Co-operation. 1998 Report, Paris, 1999, p. 72.

[13] Department for International Development, Learning Opportunities for All. A Policy Framework for Education, May 1999, p. 9.

[14] IWGE, Education Aid Policies and Practices. Meeting of the International Working Group on Education (IWGE), Nice, France, 16 -18 November 1994, pp. 18 and 25.

[15] P. Bennell and D. Furlong, Has Jomtien Made Any Difference? Trends in Donor Funding for Education and Basic Education Since the Late 1980s, Institute of Development Studies, Brighton, March 1997, p. 10.

[16] "Wolfenson pledges development reform", Financial Times, 29 September 1999.

[17] Communiqué of the Interim Committee of the Board of Governors of the International Monetary Fund, Press Release No. 99/46 of 26 September 1999 (corrected on 27 September 1999), para. 5.

[18] In Decentralization of Education. Legal Issues (The World Bank, June 1997), Ketleen Florestal and Robb Cooper have discussed a range of pertinent legal issues, which indicates that some in-house knowledge has been generated.

[19] The World Bank's endorsement of free primary education had been included in its sector policy paper in 1980, then it disappeared for 15 years to appear again in 1995 ("free basic education"), and disappear again from the 1999 sectoral strategy.

[20] The World Bank, Education Sector Strategy, Washington, D.C., July 1999, pp. 3 and 19.

[21] The blueprint has been included in Development and Human Rights: The Role of the World Bank (September 1998, p. 23) with regard to child labour. These steps are: including pertinent issues in the policy dialogue with borrowers, training the staff to become aware of the issues, raising the issues with the borrower and helping the Government to address it, and including a provision in the lending agreement whereby the borrower will enforce its own laws.

[22] The World Bank, Education Sector Strategy, Washington, D.C., July 1999, p. 3.

[23] The World Bank, Education Sector Strategy, Washington, D.C., July 1999, p. 7.

[24] Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 54/4 of 6 October 1999, annex.

[25] The Law on the Strengthening of the Area of Human Rights in Norwegian Law (Lov om styrkning av menneskerettighetenes stilling in norsk ret, Besl. O. Nr. 58) of 13 April 1999.

[26] African Commission on Human and Peoples' Rights, Free Legal Assistance Group, Lawyers Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Témoins de Jehovah v. Zaire, Communications 25/89, 47/90, 56/91 and 100/93 (joint), Decision of the Commission adopted at its 18th ordinary session at Prais (Cape Verde), Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights 1995/96, Assembly of Heads of State and Government, Thirty-second Ordinary Session, 7-10 July 1996, Yaounde, Cameroon.

[27] EURYDICE, A Decade of Reforms at Compulsory Education Level in the European Union (1984-94), The Information Network on Education in Europe, Brussels, 1997, p. 17.

[28] The following countries are amongst the many that refer to the co-existence between free State schools and fee-charging private schools: Australia (E/1994/104/Add. 22, paras. 268-270), Austria (E/1990/6/Add.5, para. 160), Azerbaijan (E/1990/5/Add.30, para. 167), Colombia (CCPR/C/103/Add.3, para. 56), Comoros (CRC/C/28/Add.13, para. 87), Czech Republic (CRC/C/11/Add.11, para. 193), Georgia (E/1990/5/Add.37, para. 260 and CRC/C/41/Add.4/Rev.1, para. 252), Ireland (CRC/C/11/Add.12, para. 461), Laos (CRC/C/8/Add,32, para. 122), Lebanon (CRC/C/15/Add,54, paras. 12 and 30), Maldives (CRC/C/8/Add.33, para. 95), Malta (CRC/C/3/Add.56, para. 242), Mauritius (E/C.12/1994/8, para. 16), Philippines (CRC/C/3/Add.23, para. 180), Venezuela (CRC/C/3/Add.54, para. 160).

[29] Human Rights Committee, Carl Henrik Blom v. Sweden, Communication No. 191/1985, Views adopted on 4 April 1988, Selected Decisions of the Human Rights Committee under the Optional Protocol, Seventeenth to thirty-second sessions (October 1982 - April 1988), United Nations, New York, 1990, p. 219, para. 10.3; G. and L. Lindgren and L. Holm et. al. v. Sweden, Communications Nos. 298/1988 and 299/1988, Views of the Committee adopted on 9 November 1990, UN Doc. CCPR/C/40/D/298-299/1988 of 7 December 1990, para. 10.3.

[30] Brown et al. v. Board of Education of Topeka et al., Judgment of 17 May 1954, 347 US 294.

[31] European Commission on Human Rights, decisions concerning applications Nos. 6857/74 and 1533/85, Decisions and Reports, vol. 9, p. 27 and vol. 51, p. 125.

[32] Supreme Court of Canada, Adler v. Ontario, Judgment of 21 November 1996, [1996] 3 SCR 609, (1996) 140 DLR (4^{th}) 385.

[33] The Special Rapporteur deems that education constitutes a public good because its worth increases when it is shared and it cannot be prevented from spreading. Different from education, schooling cannot easily be defined as a public good because individuals can be prevented from having access to school. The denial of formal schooling cannot be equated with a lack of education - people learn at home, on the street, in the community, in prison or refugee camps.

[34] Tribunal Supremo de Puerto Rico, Asociación de Maestros v. José Arsenio Torres, 30 November 1994, 94 DTS 12.34.

[35] ... si bien la Constitución protege la actividad económica, la iniciative privada y la libre competencia y reconoce también el derecho de los particulares de fundar centros educativos, tales libertades no pueden anular ni disminuir el carácter de servicio público y de función social [atribuido por la Constitución Política a la educación,] que también y sobre todod es un derecho fundamental...

... la educación - aun la privada - debe prestarse en condiciones tales que garantice la igualdad de oportunidades en el acceso a ella, por lo cual repugna a su sentido de servicio público con profundo contenido social cualquier forma de trato discriminario o "litista"que, en virtud de un exagerado requerimiento económico, excluya per se a personas intelectualmente capaces [por] suyo nivel de ingresos.

Supreme Court of Colombia, Request by Adres De Zubiria Samper that article 203 (in part) of Law No. 115 of 1994 be determined to be unconstitutional. Judgment of 6 November 1997, C-60/97.

[36] There is not much difference between OECD and developing countries in the structure of education budgets for primary and secondary education. In OECD countries, current expenditure amounts to 92 per cent of the budget and teachers' salaries constitute 69 per cent of current expenditure; in developing countries, current expenditure is 93 per cent and teachers' salaries constitute 78 per cent of it. (OECD, Education at a Glance. OECD Indicators 1998, p. 129).

[37] The ILO Freedom of Association Committee has consistently rejected assertions that teaching is an essential service and thus teachers could be denied the right to strike, stating that the right to strike can only be restricted and even prohibited in the public service (public employees being those who act as agents of the public authority) or in the essential services in the strict sense of the term (i.e. those services whose interruption would endanger the life, personal safety or health of the whole or part of the population). Freedom of Association Committee - 272nd Report, Case No. 1503 (Peru), para. 117.

[38] Commission on Human Rights resolution 1998/33, para. 6 (a) (ii).

[39] In the contemporary history of the introduction of fees in primary school, the precedent is often attributed as having been set by Mateen Thobani's study of Malawi, which argued that school fees would not decrease enrolment and that it would not be the poorest who would drop out of schooling as a result (M. Thobani, "Charging user fees for social services: the case of education in Malawi", World Bank Staff Working Paper No. 572, Washington, D.C., 1983), to be proved wrong after the introduction of school fees resulted in plummeting enrolment (B. Fuller, "Eroding economy, declining school quality: the case of Malawi", IDS Bulletin, vol. 20, 1989). The elimination of school fees in 1994 resulted in the doubling of enrolment (S. Reddy and J. Vandemoortele, "User financing of basic social services: a review of theoretical arguments and empirical evidence", UNICEF Staff Working Paper, New York, 1996). The World Bank's advocacy for increasing school fees in Malawi in 1982-83, for which Thobani's work was frequently quoted as the most illustrative of the Bank's reasoning at the time, led to the formulation of what became known as the "Thobani rule", whereby families and individuals had to pay fees in order to access nominally available public services, otherwise the services would not be available at all or their quality would be unacceptably low. (P. Penrose, Planning and Financing Sustainable Education Systems in Sub-Saharan Africa, Department for International Development, Education Research, Serial No. 7, London, 1998).

[40] A listing of countries where fees were charged at all levels of education was compiled by the World Bank in 1986. African countries which charged fees in primary school in the early and mid-1980s included Burkina Faso, the Central African Republic, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Togo, Uganda and Zambia (G. Psacharopulous, J.-P. Tan and E. Jimenez, Financing Education in Developing Countries. An Exploration of Policy Options, The World Bank, Washington, D.C., July 1986, p. 55).

[41] Article 26 of the Universal Declaration of Human Rights, article 13.2 (a) of the International Covenant on Economic, Social and Cultural Rights and article 28.1 (a) of the Convention on the Rights of the Child.

[42] Reservations to article 13.2 (a) of the International Covenant on Economic, Social and Cultural Rights have been submitted by Barbados, Madagascar and Zambia and the wording of all three emphasized the existing resource constraints; the general reservation by Bangladesh also points to the existing economic conditions. The general reservation by Rwanda which limits the provisions on education to the scope of rights recognized in Rwanda's Constitution could also point to a divergence from education being free and compulsory.

Reservations to article 28.1 (a) of the Convention on the Rights of the Child have been submitted by Samoa and Swaziland, also pointing to resource constraints (as do the general reservations by India, Oman and Tunisia), while the reservation of Singapore limits access to free primary education to citizens. Reservations which confine the rights of the child to those already recognized in Constitutions (by Brunei Darussalam, Indonesia and Malaysia) could also indicate non-acceptance of free and compulsory primary education.

[43] The commentary by the Secretary-General of the Council of Europe had this to say about the replacement of the originally proposed "every person has the right to education" by a negative formulation:

"The right to education has been asserted in the negative formulation: 'No person shall be denied the right to education' because the positive formulation proposed by the [Consultative Assembly in August 1950] might be interpreted to impose on the State the positive duty to provide education. While education is provided by the State for children, as a matter of course, in all member States, it is not possible for them to give an unlimited guarantee to provide education, as that might be construed to apply to illiterate adults for whom no facilities exist, or to types or standards of education which the State cannot furnish for one reason or another."

Council of Europe, Collected Edition of the Travaux Préparatoires of the European Convention on Human Rights, Martinus Nijhoff Publishers, Dordrecht, 1985, vol. VIII, pp. 11-12.

[44] Reservations to article 2 of the First Protocol which deals with education have been submitted by Bulgaria, Germany, Greece, Moldova, Romania, and the United Kingdom; they all limit Government's financial commitment to funding schools set up through the exercise of parental freedom to educate their children in accordance with their beliefs.

[45] The Special Rapporteur acknowledges with gratitude excellent background research on financial obstacles to access to primary education under the human rights reporting procedures by Lionel Yee at the International Human Rights Clinic of the New York University School of Law, under the supervision of Professor Donna Sullivan.

[46] School fees are charged in Benin (CRC/C/3/Add.52, paras. 169 and 188), Cameroon (E/1990/5/Add.35, paras. 118 and 119), Central African Republic (CRC/C/11/Add.18, paras. 29 and 68), Chad (CRC/C/3/Add.50, para. 42), Fiji (CRC/C/28/Add.7, paras. 202, 206-207), Gambia (E/C.12/1994/9, para. 17), Ghana (CRC/C/3/Add.39, para. 110), Guinea (E/C.12/1/Add.5, para. 23), Lesotho (CRC/C/11/Add.20, para. 198), Madagascar (CRC/C/8/Add.5, para. 218), Namibia (CRC/C/3/Add.12, para. 346), Nigeria (E/C.12/1/Add.23, para. 30), Saint Vincent and the Grenadines (E/C.12/1/Add.21, para. 27), Senegal (CRC/C/15/Add.44, para. 14), Solomon Islands (E/C.12/1999/SR.9, para. 14), South Africa (CRC/C/51/Add.2, paras. 388 and 399), Vanuatu (CRC/C/15/Add.111, para. 21), Zimbabwe (E/1990/5/Add.28, para. 194 and CRC/C/3/Add.35, paras. 32, 181 and 195).

[47] Algeria (E/1990/5/Add.22, para. 231), China (concluding observations of CEDAW, A/54/38, para. 295, and CRC/C/11/Add.7, para. 178), Djibouti (CRC/C/8/Add.39, para. 101), Indonesia (CRC/C/3/Add.26, para. 66), Lao People's Democratic Republic (CRC/C/15/Add.78, para. 24), Mali (CRC/C/3/Add.53, para. 142), New Zealand (CRC/C/28/Add.3, para. 277), Nicaragua (CRC/C/3/Add.25, para. 40), Paraguay (CRC/C/3/Add.22, para. 120), United Republic of Tanzania (CRC/C/8/Add.14, paras. 24 (v) and 49), Viet Nam (CRC/C/3/Add.4, para. 203), and Yemen (CRC/C/15/Add.102, para. 4).

[48] Textbooks are reportedly provided free of charge in Austria (E/1990/6/Add.5, para. 155), Bulgaria (CRC/C/8/Add.29, para. 201), Denmark (E/1994/104/Add.15, para. 325), Finland (CRC/C/8/Add.22, para. 449), Germany (E/1994/104/Add.14, para. 340), Iceland

(CRC/C/11/Add.6, para. 313), Italy (CRC/C/8/Add.18, para. 166), Japan (CRC/C/41/Add.1, para. 217), Sri Lanka (E/1990/5/Add.32, para. 318) and Sweden (CRC/C/3/Add.1, para. 170). This listing demonstrates that provision of free schoolbooks is confined to Western European countries with the exception of Bulgaria and Sri Lanka. Textbooks are subsidized in many countries, for example in Nepal (CRC/C/3/Add.34, para. 293) or the Russian Federation (CRC/C/65/Add.5, para. 307). In Armenia, textbooks are reportedly loaned to pupils against the payment of an annual fee and/or the parents have to contribute to the cost of textbooks (CRC/C/28/Add.9, para. 60 and E/1990/5/Add.36, para. 259), while in Georgia the production of textbooks has been commercialized and they are not available to the majority of children who cannot pay for them (CRC/C/41/Add.4/Rev.1, para. 259).

[49] Such remarks have been made concerning countries in transition, such as Hungary (CRC/C/8/Add.34, para. 66) or Yugoslavia (CRC/C/15/Add.49, para. 18).

[50] A commitment to facilitate the schooling of poor children through financial subsidies to their families has been reported from countries as different as Japan (CRC/C/41/Add.1, para. 217) and Venezuela (CRC/C/3/Add.54, para. 165).

[51] Commission on Human Rights resolution 1999/36 of 26 April 1999, on the right to freedom of opinion and expression, para. 9 (b).

[52] The ILO Freedom of Association Committee has indirectly dealt with the expulsion of unmarried pregnant teachers in Saint Lucia, according to a 1977 regulation which stipulates that "an unmarried teacher who becomes pregnant shall be dismissed upon becoming pregnant a second time if still unmarried". The case revolved around the non-application of a collective agreement which aimed to alter that legal provision, but tackled the expulsion of pregnant schoolteachers in that the background transpired to be "the ideal of a married family life" for which teachers were expected to set the role model. Freedom of Association Committee, 270th Report, Case No. 1447 (Saint Lucia).

[53] School Drop-out & Adolescent Pregnancy: African Education Ministers Count the Cost. A Report on the Ministerial Consultation held from 15 to 18 September, 1994, Mauritius, organized by Forum for African Women Educationalists (FAWE) in collaboration with the Government of Mauritius, pp. 23-24 and 58-60.

[54] E.L.M. Bayona and I. Kandji-Murangi, Botswana's Pregnancy Related Educational Policies and Their Implications on Ex-pregnant Girls' Education and Productivity, Research Priorities for the Education of Girls and Women in Africa, Abridged Research Report No. 16, Academy Science Publishers, Nairobi, undated, p. viii.

[55] The quoted part of the judgment reads in the original as follows: "... aunque la 'desescolarización' no implica la pérdida absoluta del derecho a la educación, sí implica su prestación conforme a una condición que tiende a estigmatizar a la alumna embarazada y a discriminarla frente a los restantes estudiantes en la recepción de los beneficion derivados del [derecho a la educación].

"... erigir - por via reglamentaria - el embarazo de una estudiante en causal de sanción, viola los derechos fundamentales a la igualdad, a la intimidad, al libre desarollo de la personalidad y a la educación."

Supreme Court of Colombia, Crisanto Arcangel Martinez Martinez y Maria Eglina Suarez Robayo v. Collegio Cuidad de Cali, No. T-177814, 11 November 1998.

[56] Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, of 17 June 1999.

[57] ILO Convention No. 10 laid down in 1921 the prohibition of employment which prejudices children's school attendance, setting the age at 14. ILO Convention No. 138 strengthened the correspondence between the school-leaving age and the minimum age for employment, raising it to 15.

[58] ILO-IPEC Highlights of 1998, International Labour Organization - International Programme on the Elimination of Child Labour, Geneva, October 1998, p. 6.

[59] D. Atchoarena and S. Hite, "Training poorly educated people in Africa", document prepared for the International Labour Office by the International Institute for Educational Planning, Paris, April 1999, p. 65.

[60] N. Haspels and others, Action against child labour. Strategies in education. Country experiences in the mobilization of teachers, educators and their organizations in combating child labour, ILO-IPEC, Geneva, May 1999, p. 41.

[61] ILO-IPEC, "Action against child labour: the role of education", a briefing paper produced for Consortium Meeting on Secondary Education, Paris, 10-11 June 1999, p. 10.

[62] Supreme Court of India, Mehta v. State of Tamil Nadu, Judgment of 10 December 1996, (1996) 6 SCC 756; AIR 1997 SC 699; (1997) 2 BHRC 258.

[63] IWGE, Disadvantage, Dialogue and Development Co-operation in Education. Meeting of the International Working Group on Education (IWGE), Feldafing, Munich, 23-26 June 1998, International Institute for Educational Planning, Paris, 1999, p. 56.

[64] The two indicators chosen by the World Bank to assess the legal infrastructure underpinning its recent focus on knowledge-based economy have been creditors' and shareholders' rights. The World Bank, World Development Report 1998/99: Knowledge for Development, Oxford University Press, New York, 1999, pp. 178 and 181.

[65] Sub-Commission on the Promotion and Protection of Human Rights, resolution 1999/29 on globalization and its impact on the full enjoyment of all human rights and resolution 1999/30 on trade liberalization and its impact on human rights of 26 August 1999.

[66] Human capital is commonly defined as the sum of economically relevant attributes (knowledge, skills, competence) held by the working-age population.

[67] OECD, Measuring What People Know: Human Capital Accounting for the Knowledge Economy, Paris, 1996, p. 22.

[68] OECD, Science, Technology and Industry Scoreboard 1999: Benchmarking Knowledge-Based Economies, Paris, 1999, pp. 16-17.

[69] OECD, Human Capital Investment: An International Comparison, Paris, 1998, p. 93.

[70] P. Bennell and T. Pearce, The Internationalization of Higher Education: Exporting Education to Developing and Transitional Economies, Institute of Development Studies, Brighton, September 1998, p. 21.

[71] The World Bank, World Development Report 1998/99: Knowledge for Development, Oxford University Press, 1999, p. 146.

[72] Resolution 1999/25, para. 6 (b).

[73] Sub-Commission on the Promotion and Protection of Human Rights, resolution 1999/6, of 25 August 1999, on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, para. 16 (e) and (i).